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7 Attorneys for Defendant  
HARTFORD CASUALTY INSURANCE COMPANY

8 **UNITED STATES DISTRICT COURT**

9 **SOUTHERN DISTRICT**

10 11 FRELING BAKER and  
12 NATALIE JENSEN,

13 Plaintiffs,

14 vs.

15 HARTFORD CASUALTY  
16 INSURANCE COMPANY, et al.,

17 Defendants.

18 } CASE NO. 07 CV 2426 WQH BLM

19 } SAN DIEGO SUPERIOR COURT  
20 } CASE NO. 37-2007-00082010-CU-BC-  
21 } CTL

22 } **ANSWER TO COMPLAINT BY  
23 } DEFENDANT HARTFORD  
24 } CASUALTY INSURANCE  
25 } COMPANY**

26 DATE ACTION FILED: 11/16/07  
27 TRIAL DATE: None Set

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1       1. Answering paragraph 1, Hartford is presently informed and believes  
2 that these allegations are true, and based thereon, admits the allegations.

3       2. Answering paragraph 2, Hartford admits that it is an insurance  
4 company authorized to transact business in the State of California. As to the  
5 remainder of the allegations, Hartford presently lacks sufficient information or  
6 knowledge to form a belief as to the truth of these allegations, and based thereon,  
7 presently denies these allegations.

8       3. Answering paragraph 3, Hartford presently lacks sufficient  
9 information or knowledge to form a belief as to the truth of these allegations, and  
10 based thereon, presently denies these allegations.

11      4. Answering paragraph 4, Hartford presently lacks sufficient  
12 information or knowledge to form a belief as to the truth of these allegations, and  
13 based thereon, presently denies these allegations.

14      5. Answering paragraph 5, Hartford presently lacks sufficient  
15 information or knowledge to form a belief as to the truth of these allegations, and  
16 based thereon, presently denies these allegations.

17      6. Answering paragraph 6, Hartford admits that it issued an Advantage 5  
18 Homeowners Policy Form H-5A to Natalie Jensen and Freling Baker, policy  
19 number 72 RB 230563, for property located at 2715 Inverness Drive, La Jolla, CA  
20 92037, and that the policy was effective March 1, 2005 through March 1, 2006.  
21 Hartford denies that the documents attached to Plaintiffs' Complaint as Exhibit A  
22 constitute a complete and accurate copy of the policy, and based thereon, denies  
23 the remaining allegations. Hartford will attempt to reach a stipulation with  
24 Plaintiffs regarding a complete and accurate copy of the policy.

25      7. Answering paragraph 7, Hartford denies that a fiduciary relationship  
26 existed or exists between it and plaintiffs. As to the remainder of the allegations,  
27 Hartford presently lacks sufficient information or knowledge to form a belief as to  
28 the truth of these allegations, and based thereon, presently denies these allegations.

1       8. Answering paragraph 8, Hartford admits that on or about May 17,  
2 2005 plaintiff Freling Baker reported a vandalism loss to their property located at  
3 2715 Inverness Drive, La Jolla, CA 92037 that allegedly occurred on or about May  
4 10, 2005. Hartford admits that it made certain payments for some of the claimed  
5 loss pursuant to the terms and conditions of the applicable Advantage 5  
6 Homeowners Policy, policy number 72 RB 230563. As to the remainder of the  
7 allegations, Hartford presently lacks sufficient information or knowledge to form a  
8 belief as to the truth of these allegations, and based thereon, presently denies these  
9 allegations.

10      9. Answering paragraph 9, Hartford presently lacks sufficient  
11 information or knowledge to form a belief as to the truth of these allegations, and  
12 based thereon, presently denies these allegations.

13      10. Answering paragraph 10, Hartford presently lacks sufficient  
14 information or knowledge to form a belief as to the truth of these allegations, and  
15 based thereon, presently denies these allegations.

16      11. Answering paragraph 11, Hartford denies that it breached the  
17 Advantage 5 Homeowners Policy, policy number 72 RB 230563. As to the  
18 remainder of the allegations, Hartford presently lacks sufficient information or  
19 knowledge to form a belief as to the truth of these allegations, and based thereon,  
20 presently denies these allegations.

21      12. Answering paragraph 12, Hartford denies that it breached the  
22 Advantage 5 Homeowners Policy, policy number 72 RB 230563. As to the  
23 remainder of the allegations, Hartford presently lacks sufficient information or  
24 knowledge to form a belief as to the truth of these allegations, and based thereon,  
25 presently denies these allegations.

26      13. Answering paragraph 13, Hartford incorporates its answers to  
27 paragraphs 1 – 12 above.

28      14. Answering paragraph 14, Hartford admits that on or about May 17,

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1 2005 plaintiff Freling Baker reported a vandalism loss to plaintiffs' property that  
2 allegedly occurred on or about May 10, 2005. Hartford admits that pursuant to an  
3 agreement with plaintiffs, Hartford representative Don Bailey inspected the loss  
4 location on or about May 24, 2005. Hartford admits that it made certain payments  
5 for some of the claimed loss pursuant to the terms and conditions of the applicable  
6 Advantage 5 Homeowners Policy, policy number 72 RB 230563. As to the  
7 remainder of the allegations, Hartford presently lacks sufficient information or  
8 knowledge to form a belief as to the truth of these allegations, and based thereon,  
9 presently denies these allegations.

10 15. Answering paragraph 15, Hartford admits that on or about May 17,  
11 2005 plaintiff Freling Baker reported a vandalism loss to plaintiffs' property that  
12 allegedly occurred on or about May 10, 2005. Hartford admits that pursuant to an  
13 agreement with plaintiffs, Hartford representative Don Bailey inspected the loss  
14 location on or about May 24, 2005. Hartford admits that it made certain payments  
15 for some of the claimed loss pursuant to the terms and conditions of the applicable  
16 Advantage 5 Homeowners Policy, policy number 72 RB 230563. As to the  
17 remainder of the allegations, Hartford presently lacks sufficient information or  
18 knowledge to form a belief as to the truth of these allegations, and based thereon,  
19 presently denies these allegations.

20 16. Answering paragraph 16, Hartford admits that an implied covenant of  
21 good faith and fair dealing existed in the Advantage 5 Homeowners Policy, policy  
22 number 72 RB 230563, but denies that it breached the implied covenant of good  
23 faith and fair dealing. As to the remainder of the allegations, Hartford presently  
24 lacks sufficient information or knowledge to form a belief as to the truth of these  
25 allegations, and based thereon, presently denies these allegations.

26 17. Answering paragraph 17, Hartford denies that it unreasonably  
27 withheld or will unreasonably withhold, absent a court order, compensable policy  
28 benefits claimed by plaintiffs under the Advantage 5 Homeowners Policy, policy

number 72 RB 230563, for a vandalism loss that allegedly occurred on or about May 10, 2005.

3       18. Answering paragraph 18, Hartford denies that plaintiffs' claimed  
4 losses are a direct and proximate result of Hartford's alleged acts and omissions as  
5 set forth in paragraphs 1 - 17 of the complaint, and Hartford incorporates its  
6 responses to paragraphs 1 - 17 above. As to the remainder of the allegations,  
7 Hartford presently lacks sufficient information or knowledge to form a belief as to  
8 the truth of these allegations, and based thereon, presently denies these allegations.

9 ||| 19. Answering paragraph 19, Hartford denies the allegations.

## AFFIRMATIVE DEFENSES

## FIRST AFFIRMATIVE DEFENSE

3       20. Hartford alleges that the Complaint fails to state a cause of action for  
4 breach of contract.

## SECOND AFFIRMATIVE DEFENSE

6       21. Hartford alleges that the Complaint fails to state a cause of action for  
7 bad faith breach of contract.

### THIRD AFFIRMATIVE DEFENSE

19       22. Hartford alleges that the various definitions, terms, provisions, and  
20 conditions within the subject Advantage 5 Homeowners Policy, policy number 72  
21 RB 230563, determines the parties' rights, duties, and what is and is not covered.  
22 By virtue thereof, some of Plaintiffs' claimed loss and damages are barred or  
23 diminished. Hartford reserves the right to amend or withdraw this defense as  
24 additional facts are learned during this litigation.

#### FOURTH AFFIRMATIVE DEFENSE

26        23. Hartford alleges that to the extent Plaintiffs have been compensated  
27 for their alleged injuries and damages, Hartford is entitled to an offset of that  
28 amount.

## FIFTH AFFIRMATIVE DEFENSE

2       24. Hartford alleges on information and belief that Plaintiffs may not have  
3       complied with one or more of the Conditions of the subject policy, which  
4       precludes and/or reduces their claimed damages. Hartford reserves the right to  
5       amend or withdraw this defense as additional facts are learned during this  
6       litigation.

## SIXTH AFFIRMATIVE DEFENSE

8        25. Hartford alleges that Plaintiffs' claimed injuries and damages were  
9 proximately contributed to and/or caused by the acts, conduct or omissions of  
10 Plaintiffs or others than Hartford, which precludes or diminishes recovery from  
11 Hartford. Hartford reserves the right to amend or withdraw this defense as  
12 additional facts are learned during this litigation.

## SEVENTH AFFIRMATIVE DEFENSE

14        26. Hartford alleges on information and belief that Plaintiffs' claims for  
15 recovery and/or each of their alleged causes of action are barred in whole or in part  
16 by appropriate statute of limitations, including, but not limited to, sections 337,  
17 338, 339, 340, and/or 343 of the California Code of Civil Procedure. Hartford  
18 reserves the right to amend or withdraw this defense as additional facts are learned  
19 during this litigation.

## EIGHTH AFFIRMATIVE DEFENSE

21       27. Hartford alleges on information and belief that Plaintiffs may have  
22 waived claims for damages against Hartford. Hartford reserves the right to amend  
23 or withdraw this defense as additional facts are learned during this litigation.

## NINTH AFFIRMATIVE DEFENSE

25       28. Hartford alleges on information and belief that Plaintiffs may be  
26 estopped to seek the relief requested against Hartford. Hartford reserves the right to  
27 amend or withdraw this defense as additional facts are learned during this  
28 litigation.

## TENTH AFFIRMATIVE DEFENSE

2        29. Hartford alleges on information and belief that Plaintiffs may be  
3 guilty of laches, which precludes and/or reduces their claimed damages. Hartford  
4 reserves the right to amend or withdraw this defense as additional facts are learned  
5 during this litigation.

## ELEVENTH AFFIRMATIVE DEFENSE

7       30. Hartford alleges on information and belief that Plaintiffs may be  
8 barred from obtaining any legal or equitable relief from Hartford due to unclean  
9 hands. Hartford reserves the right to amend or withdraw this defense as additional  
10 facts are learned during this litigation.

## TWELFTH AFFIRMATIVE DEFENSE

12       31. Hartford alleges on information and belief that Plaintiffs may have  
13 failed to properly mitigate damages and are therefore proportionately precluded  
14 from recovery. Hartford reserves the right to amend or withdraw this defense as  
15 additional facts are learned during this litigation.

### THIRTEENTH AFFIRMATIVE DEFENSE

17       32. Hartford alleges on information and belief that Plaintiffs' purported  
18 claims for damages, other than policy benefits plus interest, are barred or  
19 diminished by the provisions of California Civil Code §§ 3300 – 3302.

## FOURTEENTH AFFIRMATIVE DEFENSE

21       33. Hartford alleges that it properly exercised the privilege of asserting its  
22 legal rights in a permissible way and communicated in good faith with Plaintiffs  
23 and other interested persons, all within the meaning of California Civil Code  
24 section 47(c).

## FIFTEENTH AFFIRMATIVE DEFENSE

26       34. Hartford alleges that Civil Code § 3294, under which Plaintiffs' claim  
27 for punitive damages is apparently made, is invalid on its face or as applied to  
28 Hartford pursuant to Article I, Section 10, Article IV, Section 2 and the First, Fifth,

1 Sixth, Eighth and Fourteenth Amendments to the United States Constitution; and  
2 pursuant to Article I, Sections 7, 9, 15 and 17, and Article IV, Section 17 of the  
3 California Constitution.

4 SIXTEENTH AFFIRMATIVE DEFENSE

5       35. Hartford alleges that it presently has insufficient information and  
6 knowledge upon which to form a belief that it could assert additional affirmative  
7 defenses; however, Hartford intends to rely upon other defenses that may become  
8 legally available or apparent during proceedings in this case, and hereby reserves  
9 the right to amend its answer to assert other defenses.

10 PRAYER

11 WHEREFORE, Hartford prays for judgment as follows:

- 12       1. That Plaintiffs take nothing by way of their Complaint;  
13       2. For attorneys' fees and costs incurred in defending this action; and  
14       3. For such other and further relief as the Court deems just and proper.

16 DATED: January 2, 2008

BERGER KAHN, A Law Corporation

18 By: s/Teresa R. Ponder

20 TERESA R. PONDER, ESQ.  
21 Attorneys for Defendant  
22 HARTFORD CASUALTY  
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1                   **AFFIDAVIT AND DECLARATION OF PROOF OF SERVICE**

2                   I am over the age of eighteen years and not a party to the within action. I am  
 3 employed by Berger Kahn, A Law Corporation, whose business address is: 2 Park  
 4 Plaza, Suite 650, Irvine, California 92614-8516 ("the firm").

5                   On January 2, 2008, I served the within document(s) described as:  
 6                   **ANSWER TO COMPLAINT BY DEFENDANT HARTFORD CASUALTY**  
 7                   **INSURANCE COMPANY** on the interested parties in this action as follows:

8	John P. Stennett, Esq. STENNETT & STENNETT 501 West Broadway, Suite 1340 San Diego, CA 92101	9	Attorneys for Plaintiffs FRELING BAKER and NATALIE JENSEN
10	<u>sc@stennettcasino.com</u> <u>lstrong@stennettcasino.com</u>	11	
12	Telephone: (619) 544-6887 Facsimile: (619) 233-3796	13	

13                   **BY E-MAIL OR ELECTRONIC TRANSMISSION** (Code Civ. Proc. §  
 14 1010.6(a)(6))—Based on a court order or an agreement of the parties to accept service by  
 15 e-mail or electronic transmission, I caused the document(s) to be sent to the persons at the  
 16 e-mail addresses listed above. I did not receive, within a reasonable time after the  
 17 transmission, any electronic message or other indication that the transmission was  
 18 unsuccessful.

19                   I declare that I am employed in the office of a member of the bar of this  
 20 Court at whose direction the service was made.

21                   Executed on January 2, 2008, at Irvine, California.

22                   \_\_\_\_\_  
 23                   s/Julie Mills  
 24                   Julie Mills